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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,803	02/11/2002	Henri E. Rosen	Rosen 37	4375

7590

10/03/2003

Jacobs Patent Office
P.O. Box 390438
Cambridge, MA 02139

EXAMINER

STASHICK, ANTHONY D

ART UNIT PAPER NUMBER

3728

DATE MAILED: 10/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

NK

Office Action Summary	Application No. 10/073,803	Applicant(s) ROSEN	
	Examiner Anthony D Stashick	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

1. The following is a quotation of the first paragraph of 35

U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 9-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 9 contains the limitations of the footbed having a flat bottom surface and an upper surface which has raised peripheral edges at the mid-portion that slope gradually downward from each edge; a shim member (the wedges were disclosed as being part of the footbed canting assembly and not a shim, see page 3, paragraph 2.). Claim 17 contains limitations with similar language to claim 9 as noted above. Claims 16 and 23 contain the limitations of "the left wedge, the right wedge, and the unconnected central area therebetween in total are about 5 to 35% narrower than the corresponding mid-portion location of the footbed assembly." Which is not supported by the disclosure as the disclosure fails to mention

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any of this comparison as filed and one cannot gather this information from the drawings filed with the application.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Herbig 4,166,329. Herbig '329 discloses all the limitations of the claims including the following: a shoe comprising a shoe having an upper, a sole and an adjustable footbed canting assembly (see Figures 1-3); an adjustably movable side wedge 13 which moves predominantly laterally relative to the length-wise axis of the shoe (moves laterally when the adjusting screw 16 is turned) to change the transverse canting attitude of the footbed canting assembly relative to a weight-bearing foot thereover and supported thereon; means to prevent entry of unwanted foreign matter (shoe upper is fastened to the user's foot); the adjustable support means is not removable from the shoe (cannot be easily or quickly removed

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until screw is fully removed from the assembly); the adjustable movable side wedge is moved by a manually operable means 22; the manually operable means comprises a manually adjusted cam 13 located in a mid-portion of the shoe forward of the breast of the heel (see Figure 1); the manually operable means are controlled from an outer surface of the shoe (see Figures 1 and 3); the adjustable footbed canting assembly is removably insertable in the shoe (can be removed once screw 16 is removed).

5. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosen 3,686,777. Rosen '777 discloses all the limitations of the claims including the following: a shoe comprising a shoe having an upper, a sole and an adjustable footbed canting assembly (see Figure 1); an adjustably movable side wedge 21, 23 which moves predominantly laterally relative to the length-wise axis of the shoe to change the transverse canting attitude of the footbed canting assembly relative to a weight-bearing foot thereover and supported thereon (moves inward or outward depending upon the adjustment of cam 40; means to prevent entry of unwanted foreign matter (shoe is fastened to user's foot); the adjustable support means is not removable from the shoe (located within shoe and held in by slotted knob 48); the adjustable movable side wedge is moved by a manually

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operable means 48; the manually operable means comprises a manually adjusted cam 40 located in a mid-portion of the shoe forward of the breast of the heel (see Figures 1 and 2); the manually operable means are controlled from an outer surface of the shoe (see Figures 1 and 2); the manually operable means are controlled from an inner surface of the shoe (in as much as that which is disclosed by applicant); the adjustable footbed canting assembly is removably insertable in the shoe (if the knob is removed).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is cited on form 892 enclosed herewith.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D

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Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Monday through Thursday 8:00 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Informal Fax for 3728	(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/



Anthony D Stashick
Primary Examiner
Art Unit 3728

ADS
September 19, 2003